



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 29, 1995

Ms. Angela C. Mogan  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR95-160

Dear Ms. Mogan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31000.

Harris County (the "county") received three requests. The building superintendent of the county's Family Law Center received two requests for information about county employees who apparently were involved in removing certain objects from the Family Law Center. You inform us that this information does not exist, since "[n]o records are maintained which reflect the number and names of the building superintendent's staff assigned to remove the materials."

The Open Records Act does not apply to information that does not exist. See Open Records Decision No. 555 (1990). Nor does the Open Records Act require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed). Thus, the Open Records Act does not require the county to respond to the two requests for information about the county employees involved in the clean-up of the Family Law Center.

The third request is for "all expenses spent in prosecuting Cause No. 93-60011 in the 234th District Court of Harris County-styled Harris County, Texas v. Phrogge Simons, et al." You submitted representative samples of the requested information,

which include two invoices for court transcription services, and a copy of a receipt for cash expended for the purchase of tapes from a court reporter. You assert that the county may withhold this information based on section 552.103 of the Government Code.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You have enclosed a copy of Plaintiff's First Amended Original Petition and Application for Temporary Injunction in *Harris County, Texas v. Phrogge Simmons, et al*, No. 93-060011 (Dist. Ct. of Harris County, 234th Judicial Dist. of Texas). In this case, the county seeks to enforce various county building regulations and to compel the defendants to remove and be enjoined from replacing their belongings at the Family Law Center. In the petition, plaintiff also requests that costs be assessed against the defendant.

We conclude that the requested information relates to pending litigation. The county may, therefore, withhold the requested information based on section 552.103 of the Government Code.<sup>1</sup>

We note that if the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349, 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" being more prominent.

Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 31000

Enclosures: Submitted documents

cc: Mr. E. L. Wheeler  
P.O. Box 3584  
Houston, Texas 77253  
(w/o enclosures)